



27 April 2021

Re: Amended Application for Multi-Court Exemption from the Judicial Conference's Electronic Public Access Fees

Dear representatives of the Multi-Court Exemptions Court Programs Division,

I am writing to submit an amended application for a Multi-Court Exemption from the Judicial Conference's Electronic Public Access Fees for my project titled "The Deterrent Effect of Federal Corporate Agreements." My original request did not meet the requirement for an exemption because the application was overly broad. This letter will respond to each point in the email I received (dated Thursday, April 8, 2021) to offer more specific details about the project.

This project is an examination of corporate deterrence and recidivism. Our sample is 174 public organizations that signed deferred prosecution and non-prosecution agreements with federal prosecutors between 1992-2020. These two types of agreements are often treated distinctly from plea bargains, so we are not examining plea agreements. We are seeking records of civil, criminal, and regulatory violations that were filed against each organization after the date of the agreement. We will use this information to determine the frequency of violations to gauge the effectiveness of corporate agreements in preventing recidivism. We will be using specific details of each organization's agreement and the details of subsequent violations to identify patterns.

Our sample was derived from the Corporate Prosecution Registry maintained by Garrett and Ashley (available at <https://corporate-prosecution-registry.com/>). The CPR contains records of organizations that have signed federal organizational agreements between the years 1992 to 2020. The database, which is publicly available through its website, includes the organizations' names and details of the agreements, including the dates the agreements were proposed and completed. Garrett and Ashley continually update the case information as details are found. The database, as of December 2020, contained records of 4,338 agreements, 580 of which were deferred prosecution and non-prosecution agreements (the remaining were largely plea agreements). The federal government does not maintain records of agreements, so private efforts like the CPR are the only sources for this kind of information.

After downloading the CPR from the website, we examined each of the 580 records of deferred prosecution and non-prosecution agreements to determine if the organization had been publicly traded on the New York Stock Exchange. We used multiple sources to verify each organization's ownership status, including the Wharton Research Data Services Compustat database, Mergent Online, Standard & Poor's NetAdvantage, and the Securities and Exchange Commission's Electronic Data Gathering, Analysis, and Retrieval system. After conducting these searches, we determined that 174 of the 580 organizations that signed deferred prosecution and non-

prosecution agreements are currently publicly traded or have been in the past. A list of these organizations is provided in Appendix 1: List of Companies in Sample.

Because one of the argued purposes of signing an agreement is to decrease the likelihood of future violations committed by the organization, our research largely focuses on conducting various studies to locate subsequent violations. We have been conducting searches for violations with multiple sources, including news outlets, Westlaw, the Environmental Protection Agency, and the Stanford Class Action Databases. We anticipate including other regulatory searches as well.

To conduct a comprehensive search of violations for each organization, we also need to search for federal criminal and civil records using PACER. We originally filed an Application for Multi-Court Exemption from the Judicial Conference's Electronic Public Access Fees to assist in these searches, requesting an exemption from all bankruptcy, district, appellate, and specialty courts. We originally anticipated needing to conduct searches for violations for all 174 organizations and also obtain documentation for each search result. After conducting preliminary searches using PACER, we would like to clarify and slightly amend our request.

We have recognized that we will only be counting subsequent cases in which the organization was named as a *defendant* for our measures of recidivism. We do not need fee exemptions for bankruptcy cases since we will not be considering those as violations. I have included an Amended Application for Multi-Court Exemption from the Judicial Conference's Electronic Public Access Fees as Appendix 3 to indicate that we are no longer requesting exemptions for bankruptcy searches. We will be eliminating bankruptcy cases from our searches.

Our preliminary searches showed that conducting a party search for each organization in PACER including all types of courts gives us the information we are seeking to include in our analyses. For each organization, the basic search provides the number of cases that involved the organization, as well as the case number, case year, court ID, party role, date discharged, and disposition of each case. We have determined that we will only need to access further documentation in a few rare cases. One example is if the organization's party role is listed as unknown or blank, we will be conducting additional research to determine if the organization was a defendant. Additionally, if a record appears with a similar name for the organization or an incomplete name, we will be conducting additional research to determine the full name of the organization involved in the case. For example, if a record is listed in PACER under a variation of the company's name, such as *ArthroCare* instead of the full name of *ArthroCare Corporation*, we will conduct additional research to determine if they are the same organization. The documents we will likely use to conduct eliminations of similar names will be the docket report, complaints, and/or final judgments. Following your suggestions, we will use free publicly available sources including www.govinfo.gov and others to obtain these documents before using paid PACER documentation. Unfortunately, there is no way to determine for how many cases we will need to obtain PACER documentation, but we believe we can keep it to a minimum using free resources.

While we may not need PACER regularly to obtain documentation, we do need to utilize the PACER search tools to develop a list of records for the organizations. We believe that PACER is

the best way to complete a comprehensive search for records. We are still uncertain exactly the number of party searches we will need to conduct. We will need to conduct a minimum of 174 name searches, one for each organization. We are trying to keep our searches broad initially so there is less likelihood of missing cases. We are initially conducting these searches using the simplest form of each organization name, then filtering as necessary to obtain a number of results that is both manageable and accurate. For example, a search for *ArthroCare Corporation* would begin with *ArthroCare* in the district, appellate, and specialty courts. If there is a large number of results, we would focus the search after the organization signed the agreement. For example, if the organization signed the agreement in February 2008, this search would be narrowed to February 2008 to the present. If there were still a large number of results, we would specify the party role: records for *ArthroCare* after February 2008 in which the party was a defendant. To further eliminate if necessary, we might search for *ArthroCare Corp*. We might also use the exact name match search feature. Because the aim is to keep each search as broad as possible initially, organizations with common names or those with many records will require more than one party name search (potentially up to five per name). An estimate would be 400 party name searches to cover the 174 organizations.

Because organizations can be named as a defendant in cases in any federal jurisdiction, we are still seeking exemptions for all district, appellate, and specialty courts nationally. It is not in the best interests of achieving thorough research to limit our searches to specific courts based on geographical location or a specific type of case. We count any cases in which the organization was listed as a defendant to be a subsequent violation.

To summarize our amended request, we are seeking exemptions for *party name searches* of all national district, appellate, and specialty courts for the 174 organizations in our sample. We do not need a fee exemption for bankruptcy cases. Additionally, we anticipate only needing access to case documentation in the rare situation in which we are not able to determine if a search result is for the correct organization using media research. We are also seeking a fee exemption in the cases in which we need to obtain documentation through PACER to determine more details about a case.

Thank you for your consideration of our application. Please let me know if there is anything further I can provide.

Sincerely,



Emily M. Homer, PhD, Principal Investigator
HomerE@uncw.edu
Cell phone: 419-618-8101

Enclosures:

Appendix 1: List of Companies in the Sample

Appendix 2: Previous Request

Appendix 3: Amended Application for Multi-Court Exemption from the Judicial Conference's Electronic Public Access Fees

Appendix 1: List of Companies in Sample (compiled from Corporate Prosecution Registry)

AB Volvo
ABB Ltd.
AGCO Corp.
American International Group Inc.
Alcatel-Lucent, S.A.
Alliance One International, Inc.
Alpha Natural Resources, Inc.
America Online, Inc.
American Italian Pasta Co.
American Media, Inc.
AmSouth Bancorporation
Aon Corporation
Archer Daniels Midland Company
ArthroCare Corporation
Aurora Foods, Inc.
Avanir Pharmaceuticals, Inc.
Avon Products, Inc.
Baker Hughes, Incorporated
Banco Popular de Puerto Rico
Bank of New York
Bank of Nova Scotia (Scotiabank)
Beam Suntory, Inc.
Beazer Homes USA, Inc.
Bio-Rad Laboratories, Inc.
Bristol-Myers Squibb Company
C.R. Bard, Inc.
Canadian Imperial Bank of Commerce
CareFusion Corp.
Celadon Group, Inc.
Chevron Corporation
Chipotle Mexican Grill, Inc.
Computer Associates International, Inc.
Corning, Inc.
Coventry Health Care, Inc.
CSK Auto Corp.
Deutsche Bank AG
Deutsche Telekom AG
Diebold, Inc.
El Paso Corp.

Elan Corp. plc
Embraer S.A.
Endocare, Inc.
ESI Entertainment Systems Inc.
Exide Technologies Inc.
FalconStor Software, Inc.
Faro Technologies, Inc.
Flowserve Corporation
Forest Laboratories, Inc.
Fresenius Medical Care AG & Co. KGaA
Friedman's, Inc.
General Cable Corp.
General Electric Company
General Motors Company
Genzyme Corporation
GlaxoSmithKline PLC
GNC Holdings, Inc.
Google, Inc.
Halliburton Company
Health Management Associates, LLC
HealthSouth Corporation
Helmerich & Payne, Inc.
Herbalife Nutrition, Ltd.
HSBC Holdings Plc
HSBC Holdings Plc
Imperial Holdings, Inc.
InVision Technologies, Inc.
ITT Corp.
JPMorgan Chase & Co.
Jazz Pharmaceuticals Inc.
JB Oxford Holdings Inc.
Jefferies Group, LLC
Johnson & Johnson
JPMorgan Chase & Co.
Kos Pharmaceuticals, Inc.
Las Vegas Sands Corp.
LATAM Airlines Group S.A.
Lawson Products, Inc.
Legg Mason, Inc.
Lender Processing Services, Inc.
Lloyds Banking Group PLC

Lloyds TSB Bank plc
Lucent Technologies, Inc.
Magyar Telekom, Plc.
Maximus, Inc.
Maxwell Technologies, Inc.
MCI, Inc.
Medicis Pharmaceutical Corporation
Mellon Bank, N.A.
Merck & Co., Inc.
Merrill Lynch & Co., Inc.
Micrus Corp.
Mirant Energy Trading, LLC
Mobile TeleSystems PJSC
MoneyGram International, Inc.
Monsanto Co.
National Oilwell Varco, Inc.
NeuroMetrix, Inc.
NiSource, Inc.
Noble Corporation
Novo Nordisk A/S
Och-Ziff Capital Management Group, LLC
Optimal Group, Inc.
Orthofix International N.V.
Panalpina World Transport (Holding) Ltd.
Parker Drilling Company
Patterson Companies, Inc.
Penn Traffic Co.
Petroleo Brasileiro S.A. - Petrobras
Pfizer, Inc.
Pharmacia & Upjohn Company, LLC
Pilgrim's Pride Corporation
Power Solutions International, Inc.
PPG Industries
Pride International, Inc.
Progenity, Inc.
Quest Diagnostics, Inc.
RAE Systems, Inc.
Ralph Lauren Corporation
Republic Services, Inc.
Rite Aid Corp. Corporation
Royal Bank of Scotland PLC

Salomon Brothers Inc.
Schnitzer Steel Incorporations, Inc.
Science Applications International Corporation
Serono S.A.
Shoppers Food Warehouse Corp.
Smith & Nephew PLC
Sociedad Quimica y Minera de Chile AKA Chemical & Mining Co of Chile Inc.
Spectranetics Corporation
State Street Corporation
Statoil, ASA
Stryker Corp.
Symbol Technologies Inc.
Technip S.A.
TechnipFMC plc
Telefonaktiebolaget LM Ericsson
Tenaris, S.A.
Tenet Healthcare Corporation
Teva Pharmaceutical Industries LTD
Textron, Inc.
The Boeing Company
The Goldman Sachs Group, Inc.
The Western Union Co.
Tommy Hilfiger Corp.
Total S.A.
Toyota Motor Corporation
Transocean LTD
Tyco International, Ltd.
Tyson Foods, Inc.
U.S. Bancorp
UBS AG
United Parcel Service, Inc.
United Technologies Corp.
Universal Corporation
Unum Group
VimpelCom Ltd.
Wachovia Bank, N.A.
Walmart, Inc.
Weatherford International Ltd.
Wellcare Health Plans, Inc.
Wells Fargo & Company
Westinghouse Air Brake Technologies Corporation

Whitehall Jewellers, Inc.
Willbros Group, Inc.
York International Corporation
Zimmer Biomet Holdings, Inc.
Zimmer Holdings, Inc.

Appendix 2: Previous Request

2 April 2021

Dear representatives of the Multi-Court Exemptions Court Programs Division,

I am writing to apply for a Multi-Court Exemption from the Judicial Conference's Electronic Public Access Fees. My research partner and I are conducting academic research on corporate recidivism. This is a joint project with my colleague at the University of North Carolina Wilmington, Michael O. Maume, with assistance from my graduate assistant. Our project is called "The Deterrent Effect of Federal Corporate Agreements."

Our project examines the relationship between publicly traded organizations that have signed deferred prosecution and non-prosecution agreements and their subsequent legal infractions. Beyond penalizing the company, part of the goal of signing these agreements is to deter subsequent legal activity.

We have identified a list of 174 public organizations that signed these agreements between 1992 and 2020 using the public-use Corporate Prosecution Registry database maintained by Garrett and Ashley. We are in the process of searching news outlets, state and federal regulatory agencies, and national court filings to locate records for each company. As available for each record, we are collecting information including dates of legal activity, charges filed, nature of each case, sentencing outcomes, etc.

If corporate agreements do have a deterrent effect, our results will show that organizations that have signed agreements are involved in few subsequent legal matters. Our research will be able to identify if the agreements are effective in preventing crime for different types of public companies, including separately examining the organizations by industry, type of violation, and features of the agreement. Our study can help identify if some companies are more likely to commit subsequent crime, creating opportunities for the evaluation of crime prevention techniques for publicly traded companies. Our work will bring fresh and much-needed public awareness to the empirical evidence of corporate deterrence.

Corporate deterrence is an area of concern in much of the academic literature. Unfortunately, few empirical studies have been conducted on this matter, and none to the depth that we will accomplish. We believe that part of the reason there have not been many studies is the difficulty and cost of obtaining access to the legal records. The searches through PACER are integral for completing exhaustive searches for corporate criminal and civil records. We anticipate that PACER will provide more extensive and accurate information regarding court cases than any other available source.

Given the current budget restrictions in higher education, we are seeking to be good stewards of our university and departmental resources and not utilize these limited funding sources for the PACER searches. It would be cost prohibitive to fund the searches ourselves. We examined the Federal Court Cases Integrated Database to see if it would suit our needs, but, unfortunately, these records are anonymized so we cannot use it to find records for specific organizations. We

are seeking the fee waiver to avoid unreasonable burdens on ourselves, to demonstrate to other academics how PACER can be utilized in research, and to promote public access to this information. We are seeking a fee waiver from April 1, 2021, to August 1, 2021. We should be able to conclude the searches within that time frame.

The results of this research will be incorporated into multiple manuscripts that will be submitted for publication in academic journals. We will also likely share some results at the American Society of Criminology conference in November 2021, and potentially other conferences. We do not intend to use the documentation for any purpose other than our academic research. We will not sell or publicly post any documentation we obtain.

Thank you for your consideration of our application. Please let me know if you need anything further from me.

Sincerely,



Emily M. Homer, PhD, Principal Investigator

HomerE@uncw.edu

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**Application for Multi-Court Exemption from the
Judicial Conference's Electronic Public Access (EPA) Fees**

1.) I am requesting an exemption from fees for public access to electronic case records for the courts selected below:

Courts of Appeal

- All Courts of Appeal
- First Circuit
- Second Circuit
- Third Circuit
- Fourth Circuit
- Fifth Circuit
- Sixth Circuit
- Seventh Circuit
- Eighth Circuit
- Ninth Circuit
- Tenth Circuit
- Eleventh Circuit
- D.C. Circuit
- Federal Circuit

Bankruptcy Appellate Panels (BAP)

- First Circuit - BAP
- Sixth Circuit - BAP
- Eighth Circuit - BAP
- Ninth Circuit - BAP
- Tenth Circuit - BAP

District Courts

- All District Courts
- Alabama Middle
- Alabama Northern
- Alabama Southern
- Alaska
- Arizona
- Arkansas Eastern
- Arkansas Western
- California Central
- California Eastern
- California Northern
- California Southern
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Florida Middle
- Florida Northern
- Florida Southern
- Georgia Northern
- Georgia Middle
- Georgia Southern
- Guam
- Hawaii
- Idaho
- Illinois Northern
- Illinois Central
- Illinois Southern
- Indiana Northern
- Indiana Southern
- Iowa Northern
- Iowa Southern
- Kansas
- Kentucky Eastern
- Kentucky Western
- Louisiana Eastern
- Louisiana Middle
- Louisiana Western
- Maine
- Maryland
- Massachusetts
- Michigan Eastern
- Michigan Western
- Minnesota
- Mississippi Northern
- Mississippi Southern
- Missouri Eastern
- Missouri Western
- Montana
- Nebraska
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- New York Eastern
- New York Northern
- New York Southern
- New York Western
- North Carolina Eastern
- North Carolina Middle
- North Carolina Western
- North Dakota
- Northern Mariana Islands
- Ohio Northern
- Ohio Southern
- Oklahoma Eastern
- Oklahoma Northern
- Oklahoma Western
- Oregon
- Pennsylvania Eastern
- Pennsylvania Middle
- Pennsylvania Western
- Puerto Rico
- Rhode Island
- South Carolina
- South Dakota
- Tennessee Eastern
- Tennessee Middle
- Tennessee Western
- Texas Eastern
- Texas Northern
- Texas Southern
- Texas Western
- Utah
- Vermont
- Virgin Islands
- Virginia Eastern
- Virginia Western
- Washington Eastern
- Washington Western
- West Virginia Northern
- West Virginia Southern
- Wisconsin Eastern
- Wisconsin Western
- Wyoming

Bankruptcy Courts

<input type="checkbox"/> All Bankruptcy Courts	<input type="checkbox"/> Alabama Middle	<input type="checkbox"/> Illinois Northern	<input type="checkbox"/> Nebraska	<input type="checkbox"/> Rhode Island
<input type="checkbox"/> Alabama Northern	<input type="checkbox"/> Illinois Central	<input type="checkbox"/> Nevada	<input type="checkbox"/> South Carolina	<input type="checkbox"/> South Dakota
<input type="checkbox"/> Alabama Southern	<input type="checkbox"/> Illinois Southern	<input type="checkbox"/> New Hampshire	<input type="checkbox"/> Tennessee Eastern	<input type="checkbox"/> Tennessee Middle
<input type="checkbox"/> Alaska	<input type="checkbox"/> Indiana Northern	<input type="checkbox"/> New Jersey	<input type="checkbox"/> Tennessee Western	<input type="checkbox"/> Texas Eastern
<input type="checkbox"/> Arizona	<input type="checkbox"/> Indiana Southern	<input type="checkbox"/> New Mexico	<input type="checkbox"/> Texas Northern	<input type="checkbox"/> Texas Southern
<input type="checkbox"/> Arkansas Eastern	<input type="checkbox"/> Iowa Northern	<input type="checkbox"/> New York Eastern	<input type="checkbox"/> Texas Western	<input type="checkbox"/> Utah
<input type="checkbox"/> Arkansas Western	<input type="checkbox"/> Iowa Southern	<input type="checkbox"/> New York Northern	<input type="checkbox"/> Vermont	<input type="checkbox"/> Virgin Islands
<input type="checkbox"/> California Central	<input type="checkbox"/> Kansas	<input type="checkbox"/> New York Southern	<input type="checkbox"/> Virginia Eastern	<input type="checkbox"/> Virginia Western
<input type="checkbox"/> California Eastern	<input type="checkbox"/> Kentucky Eastern	<input type="checkbox"/> New York Western	<input type="checkbox"/> Washington Eastern	<input type="checkbox"/> Washington Western
<input type="checkbox"/> California Northern	<input type="checkbox"/> Kentucky Western	<input type="checkbox"/> North Carolina Eastern	<input type="checkbox"/> West Virginia Northern	<input type="checkbox"/> West Virginia Southern
<input type="checkbox"/> California Southern	<input type="checkbox"/> Louisiana Eastern	<input type="checkbox"/> North Carolina Middle	<input type="checkbox"/> Wisconsin Eastern	<input type="checkbox"/> Wisconsin Western
<input type="checkbox"/> Colorado	<input type="checkbox"/> Louisiana Middle	<input type="checkbox"/> North Carolina Western	<input type="checkbox"/> Wyoming	
<input type="checkbox"/> Connecticut	<input type="checkbox"/> Louisiana Western	<input type="checkbox"/> North Dakota		
<input type="checkbox"/> Delaware	<input type="checkbox"/> Maine	<input type="checkbox"/> Northern Mariana Islands		
<input type="checkbox"/> District of Columbia	<input type="checkbox"/> Maryland	<input type="checkbox"/> Ohio Northern		
<input type="checkbox"/> Florida Middle	<input type="checkbox"/> Massachusetts	<input type="checkbox"/> Ohio Southern		
<input type="checkbox"/> Florida Northern	<input type="checkbox"/> Michigan Eastern	<input type="checkbox"/> Oklahoma Eastern		
<input type="checkbox"/> Florida Southern	<input type="checkbox"/> Michigan Western	<input type="checkbox"/> Oklahoma Northern		
<input type="checkbox"/> Georgia Northern	<input type="checkbox"/> Minnesota	<input type="checkbox"/> Oklahoma Western		
<input type="checkbox"/> Georgia Middle	<input type="checkbox"/> Mississippi Northern	<input type="checkbox"/> Oregon		
<input type="checkbox"/> Georgia Southern	<input type="checkbox"/> Mississippi Southern	<input type="checkbox"/> Pennsylvania Eastern		
<input type="checkbox"/> Guam	<input type="checkbox"/> Missouri Eastern	<input type="checkbox"/> Pennsylvania Middle		
<input type="checkbox"/> Hawaii	<input type="checkbox"/> Missouri Western	<input type="checkbox"/> Pennsylvania Western		
<input type="checkbox"/> Idaho	<input type="checkbox"/> Montana	<input type="checkbox"/> Puerto Rico		

National Courts

Judicial Panel on Multidistrict Litigation U.S. Court of Federal Claims U.S. Court of International Trade

2.) I am an individual associated with University of North Carolina Wilmington

3.) Please summarize why the case information from the Public Access to Court Electronic Records (PACER) service is needed and how it will be used. Also, please explain why an exemption from the courts identified is necessary. If you need more space, please provide in an attachment.

See attached.

4.) In support of this application, I affirm the following:

- a) An exemption from the Judicial Conference's EPA Fee is necessary in order to avoid unreasonable burdens and to promote public access to information.
- b) That the exemption will be for a definitive period of time: April 1, 2021, to August 1, 2021
- c) I understand that this fee exemption will apply only to me, will be valid only for the purposes stated above, and will apply only to the electronic case files of the court(s) indicated above that are available through the PACER service.
- d) I agree that any data received through this exemption will not be sold for profit, will not be transferred, will not be used for commercial purposes, and will not be redistributed via the Internet.

Declaration: I declare that all the above information is true and understand that a false statement

- may result in termination of my exempt access and an assessment of Electronic Public Access usage fees. (The box must be marked or your request will not be considered)

Emily M. Homer

Applicant's Printed Name

Visiting Assistant Professor

Applicant's Title

Emily M. Homer

Applicant's Signature

(419) 618-8101

Applicant's Phone Number

HomerE@uncw.edu

Applicant's email address

UNCW, 601 S. College Rd., Bear Hall 223

Applicant's Mailing Address

Wilmington

City

NC

28412

State

Zip Code

4-26-2021

Date

Please submit your completed, signed request via email to Multi-CourtExemptions@ao.uscourts.gov or by mail to:

Attention: Multi-Court Exemptions
Court Programs Division
DPS-CSO-PRGD
One Columbus Circle, N.E.
Washington, DC 20544

** Requests sent through the US mail may take up to two weeks to clear security.**